

RECEIVED

JUN 13 2002

GENERAL COUNSEL
OF COPYRIGHT

Before the
LIBRARY OF CONGRESS
COPYRIGHT OFFICE
Washington, D.C.

-----X
In the Matter of :
 :
 :
 DISTRIBUTION OF 1999-2001 :
 DIGITAL AUDIO :
 RECORDING FUNDS :
-----X

MOTION OF SETTLING PARTIES
FOR PARTIAL DISTRIBUTION OF MUSICAL WORKS FUND

The American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; SESAC, Inc.; The Harry Fox Agency, Inc. and The Songwriters Guild of America (collectively, the "Settling Parties") submit the following motion for partial distribution of 95% of the Digital Audio Recording Funds ("DART") Writers and Publishers Subfunds of the 1999, 2000 and 2001 Musical Works royalty funds. As in past DART distribution proceedings, the Settling Parties have reached confidential settlements concerning their respective distribution shares for the 1999, 2000 and 2001 funds and collectively submit this motion.

According to the Licensing Division of the Copyright Office (the "Office"), as of June 1, 2002 the 1999 DART Musical Works royalty fund totaled \$1,293,211, the 2000 DART Musical Works royalty fund totaled \$1,942,844 and the 2001 DART Musical Works royalty fund totaled \$1,188,598, and such funds are currently invested in interest bearing securities. We believe that circumstances warrant a partial distribution of 95% of the 1999, 2000 and 2001 DART Musical Works royalties shortly after those investments mature, or as soon thereafter as the funds are able to be distributed.

I. The Office Has Authority to Order
Precontroversy Distributions.

There is ample precedent for partial distribution of statutory royalties in advance of the declaration of a controversy. Order, In the Matter of Distribution of the 1995, 1996, 1997 and 1998 Digital Audio Recording Funds, Docket No. 99-3 CARP DD 95-98 (December 22, 1999); see also Order, In the Matter of Distribution of the 1998 Cable Royalty Fund, Docket No. 2000-6 CARP CD 98 (October 12, 2000); Order, In the Matter of Distribution of the 1996 Cable Royalty Fund, Docket No. 98-2 CARP CD 96 (October 8, 1998); Order, In the Matter of Distribution of the 1995 Cable Royalty Fund, Docket No. 97-2 CARP CD 95 (October 20, 1997); Order, In the Matter of Distribution of the 1994 Cable Royalty Fund, Docket No. 96 CARP CD 94 (October 23, 1996); Orders, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP CD 92 and In the Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP CD 93 (September 12, 1994 and Sept. 24, 1994); see also Order, In the Matter of Distribution of the 1992-1995 Satellite Royalty Funds, Docket No. 97-1 CARP SD 92-95 (March 17, 1997). The Office in those proceedings reasoned that the delays between the collection of royalties, the filing of claims and the expected initiation of proceedings justified partial distribution of the relevant royalty funds in advance of the declaration of a controversy.

The delays between collection of DART royalties and distribution likewise here warrant a partial distribution; a delay would substantially deprive the owners of such royalties. Accordingly, the Settling Parties believe that the Office should distribute 95% of the 1999-2001 DART Musical Works Funds.

II. Partial Distribution of 95% of
the 1999-2001 Musical Works Funds is Warranted.

We request that the Office distribute 95% of the 1999-2001 royalties, when those royalties next become available for distribution. As the amounts to be distributed to each Settling Party is confidential, we move to have the distribution made in bulk to a common distribution agent for all the Parties.

Distribution of less than 95% of the 1999-2001 funds would deprive the Settling Parties of a substantial amount of royalties that belong to them, collectively, during a period that may be several years long. Moreover, all Settling Parties have agreed as to the amount of the partial distribution.

Furthermore, we believe that a sufficient amount would remain with the Office to satisfy all other claims and proceedings. The only other claims that have been made to the 1999-2001 DART Musical Works Funds are claims made by individual and smaller claimants. In the two other DART proceedings to date, the CARP determined, and the Library of Congress agreed, that the Settling Parties were entitled to over 99.9% of the Musical Works Fund. See Librarian's Decision, In the Matter of Distribution of the 1995, 1996, 1997 and 1998 Digital Audio Recording Funds, Docket No. 99-3 CARP DD 95-98, 66 Fed. Reg. 9360 (February 7, 2001); Librarian's Decision, In the Matter of Distribution of the 1992, 1993 and 1994 Digital Audio Recording Funds, Docket No. 95-1 CARP DD 92-94, 62 Fed. Reg. 6558 (February 12, 1997). Certain of the individual claimants who have filed claims to the 1999-2001 Musical Works Funds are the same as those who filed claims to the 1992-1998 Musical Works Funds and all of the individual claimants' claims for these years appear to be of the same type and size as individual claims in past DART distribution proceedings. Accordingly, distribution of 95% of the 1999-2001 Musical Works Funds to the Settling Parties is appropriate.

1

Finally, the Settling Parties also hereby agree that the 1999-2001 royalties should be distributed by the Office subject to the condition uniformly imposed in such circumstances that, in the event that the final 1999-2001 percentage shares to the Settling Parties differ from the distributions made pursuant to this motion, any party who has received more than its share must return the overpayment plus interest that the payments would have earned had they remained in the fund to the proper party. See, e.g., Order, In the Matter of Distribution of the 1999 Satellite Royalty Funds, Docket No. 2001-5 CARP SD 99 (October 17, 2001); Order, In the Matter of Distribution of the 1999 Cable Royalty Fund, Docket No. 2001-6 CARP CD 99 (October 17, 2001); Order, In the Matter of Distribution of the 1992-1995 Satellite Royalty Fund, Docket No. 97-1 CARP SD 92-95 (March 17, 1997); Orders, In the Matter of Distribution of the 1992 Cable Royalty Fund, Docket No. 94 CARP CD 92 and In the Matter of Distribution of the 1993 Cable Royalty Fund, Docket No. 94 CARP CD 93 (September 12, 1994 and September 24, 1994); Order, In the Matter of Distribution of the 1994 Cable Royalty Fund, Docket No. 96 CARP CD 94 (Oct. 23, 1996); Order, In the Matter of Distribution of the 1995 Cable Royalty Fund, Docket No. 97-2 CARP CD 95 (October 20, 1997); Order, In the Matter of Distribution of the 1996 Cable Royalty Fund, Docket No. 98-2 CARP CD 96 (October 9, 1998).


CONCLUSION

For the reasons set forth above, the Settling Parties respectively urge, when the securities in which the 1999-2001 DART Musical Works Fund royalties are invested mature, that the Office reinvest such royalty funds for thirty-day periods of time and publish for comment in the Federal Register the proposed partial distribution of the 1999-2001 DART Musical Works Funds. Thereafter, the Settling Parties respectfully request that the Office make a prompt partial distribution of 95% of the 1999-2001 DART Musical Works Funds to the Settling Parties.

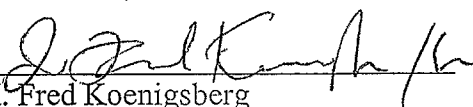
Date: June 13, 2002

Respectfully submitted,

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS


By: 

Joan McGivern
Sam Mosenkis
ASCAP
One Lincoln Plaza
New York, N.Y. 10023

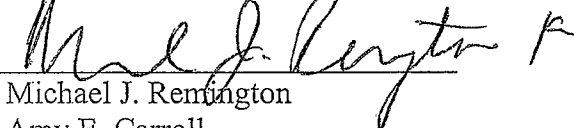
By: 

I. Fred Koenigsberg
White & Case LLP
1155 Avenue of the Americas
New York, N.Y. 10036

BROADCAST MUSIC, INC.

By: 

Marvin Berenson
Joseph J. DiMona
BMI
320 West 57th Street
New York, N.Y. 10019

By: 

Michael J. Rentington
Amy E. Carroll
Drinker Biddle & Reath LLP
1500 K Street, NW
Washington, D.C. 20005

SESAC, INC.

By: 

Patrick Collins
SESAC, Inc.
55 Music Square East
Nashville, TN 37203

By: 

John C. Beiter
Loeb & Loeb LLP
45 Music Square West
Nashville, TN 37203

THE SONGWRITERS GUILD OF
AMERICA

By: 

Lewis M. Bachman
The Songwriters Guild of America
1500 Harbor Boulevard
Weehawken, N.J. 07087

By: 

James J. Schweitzer
The Cuneo Law Group, P.C.
317 Massachusetts Avenue, NE, Suite 300
Washington, D.C. 20002

THE HARRY FOX AGENCY, INC.

By: 

Carey R. Ramos
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, N.Y. 10019